

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, *et al.*,

Defendants.

No. 7:16-CV-00108-O

**DECLARATION OF
GENE C. SCHAEER**

1. My name is Gene Schaerr. I am over the age of 18 and have personal knowledge of the contents of this declaration.

2. I am a Partner with the law firm of Schaerr Jaffe LLP, which is based in Washington, D.C.

3. Before that, I was a Partner with the law firm of Winston & Strawn, LLP, where I founded the Appellate and Critical Motions Practice Group in the firm's Washington, D.C. office. I was the chair of the firm's nationwide appellate practice from 2005 to 2014, during which time the practice group received numerous professional recognitions.

4. Before my time at Winston & Strawn, I was a Partner with the law firm of Sidley Austin, where I was a coordinator of the firm's appellate practice and the Co-Chair of the firm's Religious Institutions Practice Group for approximately ten years.

5. I began my law practice in 1987 following clerkships on the United States Supreme Court for Chief Justice Warren Burger and Justice Antonin Scalia, and on the U.S. Court of Appeals for the D.C. Circuit for then-judge Kenneth Starr.

6. During of my career, I have become an expert in the areas of constitutional law and religious freedom at both the trial and appellate levels. I have argued seven cases

before the Supreme Court and have been counsel of record in over 100 cases at the Supreme Court.

7. Given my experience, I have become familiar with the billing rates for attorneys at my firm and other firms with federal trial and appellate litigation expertise.

8. I am also familiar with the billing rates charged by expert attorneys that practice constitutional law at the trial and appellate levels.

9. As part of my experience as a litigator in constitutional and civil-rights cases, I have become familiar with the work of the Becket Fund for Religious Liberty. I have worked with them directly as co-counsel on cases at the Supreme Court and federal courts of appeals and have also filed amicus briefs in federal appellate cases where they have been counsel of record.

10. Becket Fund attorneys are well-known as expert religious liberty litigators at the United States Supreme Court. In my estimation, they are the best law firm in the nation specialized in religious liberty litigation. Over the last decade, they have prevailed in eight merits cases at the Supreme Court on behalf of clients from a wide variety of religious traditions.

11. The Becket Fund has also achieved significant success in federal appellate courts and state supreme courts. In 2021 and 2022 alone, the Becket Fund secured precedent-setting victories in religious liberty cases at the Fifth Circuit, Seventh Circuit (twice), Eighth Circuit (thrice), Ninth Circuit (twice), the Indiana Supreme Court, and the Texas Supreme Court.

12. For its successful advocacy at appellate courts across the nation, the Becket Fund was recognized by the National Law Journal as a 2020 member of the “Appellate Hot List.” The Becket Fund is the first non-profit law firm ever chosen for this list.

13. I understand that the Becket Fund was retained to assist with this case, which involved challenges under the Religious Freedom Restoration Act (RFRA) and

Administrative Procedure Act to HHS's application of the Affordable Care Act to require religious doctors and hospitals to perform or insure gender-transition procedures and abortions contrary to their conscience and medical judgment. This matter bears close resemblance to the widespread RFRA challenges to HHS's contraception mandate beginning in 2011, which applied the Affordable Care Act to require religious employers to provide insurance coverage of all forms of contraception, including those that could cause an abortion.

14. Becket was the leading law firm in the country challenging HHS's contraception mandate under RFRA—bringing the first case challenging the mandate, Complaint, *Belmont Abbey College v. HHS*, No. 11-CV-1989, ECF No. 1 (D.D.C. Nov. 10, 2011) 2011 WL 8997549; bringing the first class action challenging the mandate, Complaint, *LSP v. HHS*, No. 13-CV-2611, ECF No. 1 (D. Colo. Sept. 24, 2013) 2013 WL 5331098; winning the first Supreme Court order blocking the mandate, *Little Sisters of the Poor Home for the Aged, Denver, Colorado v. Sebelius*, 134 S. Ct. 893 (2013) (Dec. 31, 2013); winning the first Supreme Court case on the merits challenging the mandate, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); winning the first Supreme Court order blocking the mandate for non-profit employers after *Hobby Lobby*, *Wheaton College v. Burwell*, 573 U.S. 958 (2014); winning the first Supreme Court merits ruling blocking the mandate for non-profit employers, *Zubik v. Burwell*, 578 U.S. 403 (2016); winning injunctions against HHS in at least eight cases across the country, *HHS Information Central*, Becket, <https://perma.cc/7YQE-HMBJ>; and winning the first Supreme Court case establishing that HHS could grant a religious exemption from mandate, *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020). It is safe to say that no other law firm in the country has as much experience and success litigating against HHS under RFRA as Becket. And that experience would be extraordinarily valuable in a case like this one.

15. Additionally, based on my experience at international law firms, and given the controversial subject matter of this case, it would be incredibly difficult to bring in experienced counsel necessary to litigate a novel and complex case like this one. Most firms with the requisite experience would be either unable or unwilling to file and prosecute this lawsuit.

16. I have reviewed the billing rates sought by the Becket Fund attorneys in the above-captioned matter in support of Plaintiffs' fee petition. Based on my experience in this area of the law, it is my opinion that the rates the Becket Fund proposes for its attorneys are reasonable for the D.C. area.

17. Indeed, the Becket Fund's proposed billing rates are lower than the rates my firm and other firms at which I have worked would charge their clients for attorneys of comparable seniority and expertise on a similar matter.

18. They are also lower than rates charged by comparable practitioners. Thomas Goldstein of Goldstein & Russell, P.C., sought fees in 2018 based on a rate of \$1,350/hour, in a case litigated in another district court in Texas. Decl. of Eric F. Citron, *Torres v. SGE Management LLC*, No. 09-CV-2056, ECF No. 295-1 at 7 (S.D. Tex. Aug. 31, 2018). A declaration submitted in support of that rate explained that other Supreme Court practitioners such as Ted Olson and Christopher Landau charged \$1,800/hour and \$1,495/hour, respectively. *Id.*

19. Other large law firm practitioners charge similar rates, including between \$1,085-\$1,895/hour for law firm partners and between \$625-\$1,195/hour for associates. See Decl. of Erin E. Murphy in Supp. of Debtors' App. for the Retention and Employment of Kirkland & Ellis LLP, *In re: Nat'l Rifle Assoc. of Am. and Sea Girt LLC*, No. 21-30085, ECF No. 173-2 at 4 (Bankr. N.D. Tex. Feb. 17, 2021).

20. I understand that the rates the Becket Fund is proposing for its senior litigators on this case are as follows:

	2016 Rate	2017 Rate	2018 Rate	2019 Rate	2020 Rate	2021 Rate	2022 Rate
Daniel Chen ('16)	N/A	N/A	N/A	N/A	\$600/hour	\$700/hour	\$700/hour
Diana Thomson ('09)	\$790/hour	\$790/hour	N/A	N/A	N/A	N/A	N/A
Joseph Davis ('14)	N/A	N/A	N/A	\$700/hour	\$700/hour	\$790/hour	\$790/hour
Lori Windham ('05)	\$860/hour	\$860/hour	N/A	N/A	N/A	N/A	N/A
Luke Goodrich ('04)	\$860/hour	\$860/hour	\$1,000/hour	\$1,000/hour	\$1,000/hour	\$1,000/Hour	\$1,000/hour
Mark Rienzi ('00)	\$1,000/hour	\$1,000/hour	\$1,000/hour	\$1,200/hour	\$1,200/hour	\$1,200/Hour	N/A
Stephanie Barclay ('11)	\$700/hour	\$700/hour	N/A	N/A	N/A	N/A	N/A
Chase Harrington ('17)	N/A	N/A	\$550/hour	\$550/hour	N/A	N/A	N/A
Daniel Benson ('15)	\$550/hour	\$550/hour	N/A	N/A	N/A	N/A	N/A
Jacob Coate ('16)	N/A	N/A	N/A	N/A	\$600/hour	N/A	N/A
Rachel Busick ('15)	\$550/hour	\$550/hour	N/A	N/A	N/A	N/A	N/A
Paralegals	\$210/hour	\$210/hour	\$210/hour	\$210/hour	\$210/hour	\$210/hour	\$210/hour

In light of the religious liberty expertise that these lawyers brought to the task, the market rates for experts in this area of the law more broadly, the difficulty of retaining comparable counsel in a case like this one, and the degree of success obtained for the Becket Fund's clients, these rates are reasonable.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Gene C. Schaerr", written in a cursive style.

Dated: December 22, 2022

Gene C. Schaerr
Schaerr Jaffe LLP
1717 K Street NW, Suite 900
Washington, D.C. 20006